



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/575,349

11/06/2006

Dianna Bowles

14300.1008

2021

20601 7590 07/15/2009  
SPECKMAN LAW GROUP PLLC  
1201 THIRD AVENUE, SUITE 330  
SEATTLE, WA 98101

EXAMINER

PAGE, BRENT T

ART UNIT

PAPER NUMBER

1638

MAIL DATE

DELIVERY MODE

07/15/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/575,349	<b>Applicant(s)</b> BOWLES ET AL.	
	<b>Examiner</b> BRENT PAGE	<b>Art Unit</b> 1638	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4,5,8,10-18,21 and 24-27 is/are pending in the application.
- 4a) Of the above claim(s) 10,14,26 and 27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-5, 8, 11-13, 15-18, 21, and 24-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The Reply filed by Applicant on 04/23/2009 is hereby acknowledged. The cancellation without prejudice of claims 2-3, 6-7, 9, 19-20, 22-23 and 28 is hereby acknowledged. Claims 1, 4-5, 8, 10-18, 21, and 24-27 are pending. Claims 10, 14, and 26-27 remain withdrawn as being drawn to non-elected subject matter. Claims 1, 4-5, 8, 11-13, 15-18, 21 and 24-25 are examined herein on the merits.

### ***Claim Objections***

Claims 1, 4-5, 8, 11, 13, 15-18 and 24-25 objected to because of the following informalities: The claims as amended now contain non-elected subject matter. The election of Group I and SEQ ID NO:1, in the reply filed on 08/12/2008 did not point out any defects in the restriction requirement, and the reply was treated as an election without traverse. SEQ ID NOs 3 and 5 will not be searched or examined because they are drawn to non-elected subject matter. The non-elected subject matter is specifically recited in claims 1 and 15. Applicant must remove the non-elected subject matter from the claims.

### ***Double Patenting***

Applicant's arguments, see page 8 of response, filed 04/23/2009, with respect to the objection of claims 13, 19 and 28 for being substantial duplicates have been fully considered and are persuasive when taken together with the claim amendments. The objection of claims 13, 19 and 28 as duplicate claims has been withdrawn.

***Claim Rejections - 35 USC § 112-1<sup>st</sup> paragraph***

Applicant's arguments, see pages 8-9 of the response, filed 04/23/2009, with respect to written description and enablement have been fully considered and are persuasive when taken together with the claim amendments. The rejection of claims 1, 4-5, 8, 11-13, 15-18, 21 and 24-25 has been withdrawn.

***Claim Rejections - 35 USC § 112-2<sup>nd</sup> paragraph***

Applicant's arguments, see page 9 of the response, filed 04/23/2009, with respect to indefiniteness have been fully considered and are persuasive when taken together with the claim amendments. The rejection of claims 1, 4-5, 8, 11-13, 15-18, 21 and 24-25 has been withdrawn.

***Claim Rejections - 35 USC § 102***

Applicant's arguments, see pages 9-10 or response, filed 04/23/2009, with respect to anticipation have been fully considered and are persuasive when taken together with the claim amendments. The rejection of claims 1, 4-5, 8, 11-13, 15-18, 21 and 24-25 under 35 USC 102(b) as being anticipated has been withdrawn.

***Claim Rejections - 35 USC § 103***

Claims 1, 4-5, 8, 11-13, 15-18, 21 and 24-25 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Bowles et al (WO0159140) in view of Cheuk et al (GenBank accession AY049277) for the reasons of record in the office action mailed out on 11/24/2008 as well as the reasons set forth below.

Applicant's arguments filed 04/23/2009 have been fully considered but they are not persuasive.

Applicants urge that neither Bowles et al nor Cheuk et al teach or reasonably suggest SEQ ID NO:3 or SEQ ID NO:5.

This is not persuasive because the urged sequences are non-elected subject matter that is not part of the examined claims. Furthermore, adding sequences to a list of options for the nucleic acid does not obviate a rejection of obviousness wherein one of the options is taught or suggested in the prior art. Therefore the cited prior art still applies to SEQ ID NO:1 as previously stated and the rejection of the claims under 35 USC 103(a) as being obvious over Bowles et al (WO0159140) in view of Cheuk et al (GenBank accession AY049277) stands.

No claims are free of the prior art.

No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 1638

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRENT PAGE whose telephone number is (571)272-5914. The examiner can normally be reached on Monday-Friday 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571)-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brent T Page

/Anne Marie Grunberg/

Supervisory Patent Examiner, Art Unit 1638